

**AGENDA – July 28, 1999 Business Taxes Committee Meeting
Underground Storage Tank Maintenance Fee Law Regulations**

<p>Action 1 – Consent</p> <p>Regulation 1201 <i>Petroleum</i> Regulation 1203 <i>Gallon</i> Regulation 1206 <i>Operator</i> Regulation 1208 <i>Underground Storage Tanks</i> Regulation 1212 <i>Liability For Fee</i> Regulation 1213 <i>Payment Of Fee By Operator</i> Regulation 1220 <i>Exemption From Fee</i> Regulation 1248 <i>Relief From Liability</i> Regulation 1271 <i>Records</i></p>	<p>Adopt proposed language as agreed upon by staff and industry.</p>
<p>Action 2 –</p> <p>Authorization to Publish</p>	<p>Direct the publication of the proposed regulations as adopted in the above action.</p>

Issue Paper Number

99-003



BOARD OF EQUALIZATION
KEY AGENCY ISSUE

- ☐ Board Meeting
- ☒ Business Taxes Committee
- ☐ Customer Services Committee
- ☐ Legislative Committee
- ☐ Property Tax Committee
- ☐ Technology & Administration Committee
- ☐ Other

NEW UNDERGROUND STORAGE TANK MAINTENANCE FEE REGULATIONS

I. Issue

Should the Board adopt Underground Storage Tank Maintenance Fee (“UST fee”) regulations 1201, 1203, 1206, 1208, 1212, 1213, 1220, 1248, and 1271 to explain, interpret, and clarify the application of the UST Fee Law?

II. Staff Recommendation

Authorize the publication of the attached UST fee regulations (Attachment 1) to explain the law as administered by the Board. The proposed regulations are necessary so that the public and Board staff have a readily accessible source that clarifies the statutes within the UST Fee Law.

III. Other Alternative(s) Considered

No other alternatives considered.

IV. Background

The UST Fee Law (Part 26, Division 2 of the Revenue and Taxation Code, commencing with Section 50101) and related sections of the Health and Safety Code (Chapters 6.7 and 6.75, commencing with Section 25280), became effective on October 2, 1989. The UST Fee Law imposes a fee on every owner of an underground storage tank for each gallon of petroleum placed in the tank. To date, the Board has not adopted any regulations that interpret and clarify the UST Fee Law as administered by the Board. The lack of regulations has resulted in the public and staff being uncertain in some instances as to the proper application of the UST fee. The proposed regulations are necessary to inform the public and staff as to the proper application of the fee.

V. Staff Recommendation

A. Description of the Staff Recommendation

1. Regulation 1201, Petroleum

The staff recommends the adoption of Regulation 1201, Petroleum, to expand on the definition of “petroleum” in the UST Fee Law. The term “petroleum” is not defined in the Revenue and Taxation Code, but is defined in Section 25299.22 of the Health and Safety Code. Adoption of the regulation will enable fee payers to readily locate the definition of the term “petroleum” as interpreted by the Board. In addition, the proposed regulation makes specific the term “petroleum” by clarifying that it includes products that are blends of hydrocarbons derived from crude oil refined by processes such as separation, conversion, upgrading, or finishing.

2. Regulation 1203, Gallon

The staff recommends the adoption of Regulation 1203, Gallon, because the UST Fee Law does not contain a definition for the term. Adoption of the regulation is necessary because, although the UST fee is based on the number of gallons of petroleum placed into an underground storage tank, the volumetric measure of petroleum placed into a tank may have expanded or contracted due to the temperature changes before the petroleum was delivered to the site of the underground storage tank. In the absence of a statutory definition, the Board required fee payers to pay the UST fee based solely on the volumetric measure of the petroleum without temperature correction. However, in many instances the delivery of petroleum to a fee payer is based on the temperature corrected method in which the number of gallons delivered is adjusted to the volume the gallons would have been at 60 degrees Fahrenheit. Conversion of the number of gallons from the temperature corrected gallonage to the volumetric measure poses a problem for many fee payers because they are invoiced by their suppliers based on the temperature corrected method, and cannot readily convert the gallons to the volumetric measure. Therefore, the proposed regulation provides that the temperature-corrected gallonage will be accepted as the gallonage delivered when all conditions specified in the regulation are met. The specified conditions provide assurance that a fee payer is consistently reporting and remitting the UST fee based on verifiable records. Thus, the proposed regulation will facilitate accurate and timely payment of the UST fee.

3. Regulation 1206, Operator

The staff recommends adoption of Regulation 1206, Operator, to expand on the definition of the term in Health and Safety Code Section 25299.20. Section 25299.20 provides that “operator” means the person having control of, or having responsibility for, the daily operation of an underground storage tank. The proposed regulation is necessary because, in many cases, tank owners have assumed the operator is liable for the UST fee due to the operator’s daily control over the tank. The proposed regulation clarifies that the tank operator is not liable for the UST fee unless the operator is also the owner of the underground storage tank.

4. Regulation 1208, Underground Storage Tanks

The staff recommends adoption of Regulation 1208, Underground Storage Tanks, to clarify the UST Fee Law by providing, in one regulation, a description of tanks that are subject to the UST Fee Law. Health and Safety Code Section 25299.24 defines underground storage tank by referring to those tanks which meet the definition of petroleum underground storage tanks under the federal act (Subchapter IX, commencing with section 6991, of Chapter 82 of Title 42 of the United States Code). Also, Health and Safety Code Section 25283.5 exempts tanks which meet any of the enumerated criteria. The proposed regulation will provide a single reference point for defining tanks which are subject to the UST Fee Law.

5. Regulation 1212, Liability for Fee

The staff recommends adoption of Regulation 1212, Liability for Fee, to make specific the circumstances under which an owner of an underground storage tank will be subject to the UST Fee Law. The proposed regulation describes common situations in which underground storage tank owners have questioned whether they are liable for the UST fee, and clarifies that the owner is liable.

6. Regulation 1213, Payment of Fee by Operator

The staff recommends adoption of Regulation 1213, Payment of Fee by Operator, to facilitate the payment of the UST fee by the operator of the underground storage tank. Health and Safety Code Section 25299.41 provides that the owner of the underground storage tank is responsible for the UST fee. In the past, many operators have paid the UST fee for which the owners are statutorily responsible. Therefore, for the convenience of the tank owner, the proposed regulation specifies the procedures for arranging for the transfer of the fees paid by the operator to the tank owner’s account with the Board. The proposed regulation also describes the procedure for arranging for future payments to be made directly by the operator on the owner’s behalf and describes the forms that must be completed and notarized by the owner and operator as part of the fee payment arrangement.

7. Regulation 1220, Exemption from Fee

The staff recommends adoption of Regulation 1220, Exemption from Fee, to clarify who is not liable for the UST fee. The proposed regulation includes and expands on the definition of “owner” provided in Health and Safety Code Section 25299.21 by also specifying the entities that are not subject to the fee. The exemptions include tanks owned by banks and insurance companies, which are exempt, based on the California Constitution, and tanks owned by Indians, which are exempt, based on federal court decisions. Thus, the proposed regulation will provide a readily accessible reference for the applicable exemptions.

8. Regulation 1248, Relief From Liability

The staff recommends adoption of Regulation 1248, Relief from Liability, to provide certainty as to when relief from liability is available under the UST Fee Law. Revenue and Taxation Code Section 50112.5 provides that a fee payer may be relieved of liability for the UST fee, including penalty and interest, if the Board finds that the person’s failure to make a timely return or payment is due to the person’s reasonable reliance on written advice from the Board. As a result of testimony from the public at the Taxpayers’ Bill of Rights Hearing, the staff determined that the rules, which it has followed in implementing a similar section in the Sales and Use Tax Law, developed on a case-by-case basis and are not set out in any forum readily available to the public. Taxpayers have thus been uncertain as to when relief from liability is available under the statute and when it is not. The same problem exists in the UST Fee Law. Regulation 1248 is proposed to promulgate in regulatory form the Board’s construction of Section 50112.5, and is basically identical to Board Regulation 1705, which pertains to the Sales and Use Tax Law.

9. Regulation 1271, Records

The staff recommends adoption of Regulation 1271, Records, to describe in detail the records and documentation that must be retained, and the manner in which they may be maintained. Revenue and Taxation Code Section 50153 provides that fee payers must make available records and source documentation in such form as the Board may require. The proposed regulation specifies the records and documentation that are necessary and the form they should be in to support reported amounts. Since many businesses use automated data processing systems and reproductions from microfilm and microfiche, the proposed regulation stipulates the form and content that automated records and reproductions from microfiche and microfilm must be in for the Board to accept the documentation as support for reported amounts. The proposed regulation informs fee payers how long records must be retained and provides that records must be made available for the Board’s examination during that time. Since failure to maintain and keep complete and accurate records may be considered evidence of negligence or intent to evade the fee, the proposed regulation informs fee payers that such failure may result in penalties or other administrative action.

The proposed regulation is nearly identical to Board Regulation 1698 (Title 18, Cal. Code of Regulations, Section 1698), which involves the Sales and Use Tax Law. Incorporation of the same standards and requirements in the proposed regulation simplifies record keeping for fee payers who are subject to both the sales and use tax and the UST fee.

B. Pros of the Staff Recommendation

The proposed regulations will provide guidance to facilitate proper reporting of the UST fee to the Board. In addition, staff time spent in answering questions from the public will be minimized with the adoption of the proposed regulations.

C. Cons of the Staff Recommendation

None noted.

D. Statutory or Regulatory Change

Adoption of the proposed regulations will not require statutory change. The adoption of the proposed regulations is authorized under Revenue and Taxation Code Section 50152 and Health and Safety Code Section 25299.42.

E. Administrative Impact

The adoption of the proposed regulations will result in a positive administrative impact by reducing staff time currently spent in explaining the Board's construction of the provisions in the UST Fee Law.

F. Fiscal Impact

1. Cost Impact

Cost impact is minimal and absorbable.

2. Revenue Impact

No revenue impact. The proposed regulations reflect the staff's current construction of the UST Fee Law.

G. Taxpayer/Customer Impact

The proposed regulations are anticipated to have a positive impact on fee payers and customers by providing in regulatory form, the Board's construction of the UST Fee Law. It is not anticipated that either fee payer or customer will need to implement any significant changes to current reporting methods or recording procedures.

H. Critical Time Frames

This issue is not critical, but adoption of the regulations should be addressed as expeditiously as possible.

VI. Alternative 1

No other alternatives considered.

Prepared by: Special Taxes Department/Fuel Taxes Division

Current as of: July 14, 1999

Regulation 1201. PETROLEUM.

“Petroleum” means crude oil, or any fraction thereof, which is liquid at standard conditions of temperature and pressure, which means at 60 degrees Fahrenheit and 14.7 pounds per square inch absolute. Petroleum includes products that are blends of hydrocarbons derived from crude oil through processes such as separation, conversion, upgrading, or finishing.

Authority: Section 50152 Revenue and Taxation Code.
 Section 25299.42 Health and Safety Code.

Reference: Sections 50108.1 and 50109 Revenue and Taxation Code.
 Sections 25299.22, 25299.41, and 25299.43 Health and Safety Code.

Regulation 1203. GALLON.

“Gallon” means the United States gallon of 231 cubic inches, without adjustment of the volumetric gallonage for temperature correction of the petroleum delivered into the underground storage tank, except that temperature corrected gallonage to 60 degrees Fahrenheit will be accepted as the gallonage delivered when all of the following conditions are met:

(a) The quantity of petroleum delivered in a single delivery to a single location is 1,000 or more gallons; and

(b) The delivery of the petroleum is invoiced to the purchaser, and settlement is made by the purchaser, based on the temperature corrected gallonage of the petroleum delivered; or, if the delivery is to a tank location operated by the manufacturer of the petroleum, the gallonage accounted for in the inventory records of the manufacturer for the delivery location is maintained on a temperature corrected basis; and

(c) Temperature correction is consistently applied to all deliveries to the location over a period of 12 or more consecutive months.

Authority: Section 50152 Revenue and Taxation Code.
 Section 25299.42 Health and Safety Code.

Reference: Section 7355 Revenue and Taxation Code.
 Sections 25299.41 and 25299.43 Health and Safety Code.
 Title 18, California Code of Regulations, Section 1121.

Regulation 1206. OPERATOR.

“Operator” means any person who is in control of, or has responsibility for, the daily operation of an underground storage tank. The operator is not liable for the fee unless the operator is also the owner of the underground storage tank.

Authority: Section 50152 Revenue and Taxation Code.
 Section 25299.42 Health and Safety Code.

References: Sections 50107 and 50108.1 Revenue and Taxation Code.
 Section 25299.20 Health and Safety Code.

Regulation 1208. UNDERGROUND STORAGE TANKS.

(a) “Underground Storage Tank” means a tank or combination of tanks, including any attached piping, that is used for the accumulation of petroleum, and the volume of which is 10 percent or more beneath the surface of the ground.

(b) The term “underground storage tank” does not include any of the following:

(1) A tank of 1,100 gallons or less capacity which is located on a farm or on property used primarily for dwelling purposes and which is used for storing motor vehicle fuel for purposes other than for resale.

(2) A tank used for storing heating oil for consumptive use on the premises where stored.

(3) A tank which meets all the following conditions:

(A) All exterior surfaces of the tank, including connected piping, and the floor directly beneath the tank, can be monitored by direct viewing.

(B) The structure in which the tank is located is constructed in such a manner that the structure provides for secondary containment of the contents of the tank, as determined by the local agency designated pursuant to Section 25283 of the Health and Safety Code.

(C) The owner or operator of the underground storage tank conducts daily inspections of the tank and maintains a log of inspection results for review by the local agency designated pursuant to Section 25283 of the Health and Safety Code, as requested by the local agency.

(D) The local agency designated pursuant to Section 25283 of the Health and Safety Code determines without objection from the State Water Resources Control Board that the underground storage tank meets requirements which are equal to or more stringent than those imposed by Division 20, Chapter 6.7 of the Health and Safety Code, commencing with Section 25280.

Authority: Section 50152 Revenue and Taxation Code.
 Section 25299.42 Health and Safety Code.

Reference: Section 50108.1 Revenue and Taxation Code.
 Sections 25281, 25283.5, 25299.24, 25299.41, and 25299.43 Health and Safety Code.
 40 Code of Federal Regulations Section 280.12.

Regulation 1212. LIABILITY FOR FEE.

(a) The fee is imposed upon the owner of an underground storage tank for each gallon of petroleum placed into the tank. The owner of the tank is liable for payment of the fee regardless of whether the owner is the operator of the underground storage tank and is liable for the fee even if the owner and operator have entered into an agreement that requires the operator to pay the fee to the board.

(b) The fee is due regardless of whether the fee has previously been paid for gallons of petroleum that were removed from an underground storage tank and placed into another underground storage tank or redeposited into the same tank in which they were previously stored.

(c) An owner is liable for the fee on all gallons placed in the underground storage tank(s) he or she owns. Where the owner requires a certain brand of fuel to be placed in a tank and the operator also places a different brand of fuel in the tank, the owner is liable for the fee on the gallons of both brands of fuel, even if placing fuel of a different brand in the tank violates the lease between the operator and owner.

(d) An owner is liable for the fee even though the owner claims he or she did not know the fee was due or was unable to obtain information from an operator as to the gallons placed into the underground storage tank(s). As provided by subdivision (c) of Section 50159 of the Revenue and Taxation Code, the board may provide to the fee payer otherwise confidential information obtained from the operator of an underground storage tank to the extent that this information is necessary for assessment, administration, and verification of the fee.

Authority: Section 50152 Revenue and Taxation Code.
 Section 25299.42 Health and Safety Code.

References: Sections 50107, 50109, and 50159 Revenue and Taxation Code.
 Sections 25299.41 and 25299.43 Health and Safety Code.

Regulation 1213. PAYMENT OF FEE BY OPERATOR.

(a) If the board discovers that the fee has been paid by the operator, but the notarized documents described in subdivisions (b)(1) and (b)(2) below have not been filed with the board, the owner and operator will be given an opportunity to request in writing that fee payments made by the operator be transferred to the owner's account. Until such request is made, the owner remains liable for payment of the fee, penalties, and interest without credit for fees paid by the operator, and the operator may request a refund of the amounts paid pursuant to Section 50140 of the Revenue and Taxation Code.

(b) For the convenience of the owner and operator, and to facilitate payment of the fee by the operator on behalf of the owner, the board shall mail fee returns and any notices for the owner's account to the operator if both of the following conditions are met:

(1) The owner executes a notarized document in the form shown below, requesting that the fee returns and all notices for the owner's account be mailed to the operator. The owner must acknowledge in the form that he or she is responsible for the fee if, for example, the operator fails to make payment, pays the fee late, or underreports the gallons on which the fee is based. The documents will remain in effect until the owner advises the board and the operator in writing of any change.

(2) The operator executes a notarized document in the form shown below, acknowledging that he or she will pay the fee and any related interest and penalty on behalf of the owner and will not file a claim for refund of the fee based on the grounds that he or she was the operator rather than the owner of the tank and, therefore, did not owe the fee. The document will remain in effect until the operator advises the board and owner in writing of any change.

Exhibits A and B are samples of the documents described in (b)(1) and (b)(2) above.

Authority: Section 50152 Revenue and Taxation Code.
 Section 25299.42 Health and Safety Code.

References: Sections 50107, 50109, 50139, and 50140 Revenue and Taxation Code.
 Sections 25299.41 and 25299.43 Health and Safety Code.

Exhibit A

STATEMENT OF UNDERGROUND STORAGE TANK OWNER

(Title 18, California Code of Regulations, Section 1213)

Account No.: TK MT 44-

I hereby authorize the Board of Equalization to send all notices and returns concerning the identified Underground Storage Tank Maintenance Fee (Part 26, Division 2 of the Revenue and Taxation Code, commencing with Section 50101) Account to the following:

Location of tanks(s) STREET CITY COUNTY

Name of Tank Operator Area Code and Phone Number

Mailing Address of Tank Operator

By executing this document, I/we understand that all returns and notices regarding the above Underground Storage Tank Maintenance Fee Account will be mailed to the tank operator identified above, but that I/we am/are responsible for payment of all Underground Storage Tank Maintenance Fees, penalties and interest due based on the gallons of petroleum placed in the underground storage tank(s). I/we also acknowledge receipt of a copy of the Board's Pamphlet 88, Underground Storage Tank Fee.

Name of Tank Owner (Please Print) Area Code and Telephone Number

Mailing Address of Tank Owner

Signature of Tank Owner Date

Title (owner, partner, corporate officer)

Signature of Tank Owner Date

Title (owner, partner, corporate officer)

Attach Notary Statement Here

Exhibit B

STATEMENT OF UNDERGROUND STORAGE TANK OPERATOR

(Title 18, California Code of Regulations, Section 1213)

Account No.: TK MT 44-

Location of tanks(s) STREET CITY COUNTY

Name of Tank Owner Area Code and Telephone Number

Mailing Address of Tank Owner

By executing this document, I/we understand that all returns and notices regarding the above Underground Storage Tank Maintenance Fee Account will be mailed to me/us, as the tank operator identified below. As the operator of the underground storage tank, I/we acknowledge I/we am/are paying the Underground Storage Tank Maintenance Fee on behalf of the tank owner and will not apply for a refund of the fees on the basis that I/we am/are not the owner of the tank and, therefore, do not owe the fees. I/we will notify both the Board of Equalization and the tank owner of any changes affecting this account. I also acknowledge receipt of a copy of the Board's Pamphlet 88, Underground Storage Tank Fee.

Name of Tank Operator (Please Print) Area Code and Telephone Number

Mailing Address of Tank Operator

Signature of Tank Operator Date

Title (owner, partner, corporate officer)

Signature of Tank Operator Date

Title (owner, partner, corporate officer)

Attach Notary Statement Here

Regulation 1220. EXEMPTION FROM FEE.

The fee does not apply to:

- (a) The State of California, or any agency or department thereof.
- (b) The United States, its unincorporated agencies and instrumentalities.
- (c) Any incorporated agency or instrumentality of the United States wholly owned by the United States or by a corporation wholly owned by the United States.
- (d) Banks and other financial institutions.
- (e) Insurance companies.
- (f) Any person of Indian descent who is entitled to receive services as an Indian from the United States Department of the Interior when the underground storage tank is located upon an Indian reservation, including rancherias, or any land held by the United States in trust for any Indian tribe or individual Indian.

Authority: Section 50152 Revenue and Taxation Code.
 Section 25299.42 Health and Safety Code.

References: Sections 50107 and 50108 Revenue and Taxation Code.
 Sections 25299.20 and 25299.21 Health and Safety Code.

Regulation 1248. RELIEF FROM LIABILITY.

(a) IN GENERAL. A person may be relieved from the liability for the payment of the fee, including any penalties and interest added to those fees, when that liability resulted from the failure to make a timely return or a payment and such failure was found by the board to be due to reasonable reliance on:

(1) written advice given by the board under the conditions set forth in subdivision (b) below, or

(2) written advice given by the board in a prior audit of that person under the conditions set forth in subdivision (c) below. As used in this regulation, the term “prior audit” means any audit conducted prior to the current examination where the issue in question was examined.

Written advice from the board may only be relied upon by the person to whom it was originally issued or a legal or statutory successor to that person. Written advice from the board which was received during a prior audit of the person under the conditions set forth in subdivision (c) below, may be relied upon by the person audited or by a legal or statutory successor to that person.

The term “written advice” includes advice that was incorrect at the time it was issued as well as advice that was correct at the time it was issued, but, subsequent to issuance, was invalidated by a change in statutory or constitutional law, by a change in board regulations, or by a final decision of a court of competent jurisdiction. Prior written advice may not be relied upon subsequent to: (1) the effective date of a change in statutory or constitutional law and board regulations or the date of a final decision of a court of competent jurisdiction regardless that the board did not provide notice of such action; or (2) the person receiving a subsequent writing notifying the person that the advice was not valid at the time it was issued or was subsequently rendered invalid. As generally used in this regulation, the term “written advice” includes both written advice provided in a written communication under subdivision (b) below and written advice provided in a prior audit of the person under subdivision (c) below.

(b) ADVICE PROVIDED IN A WRITTEN COMMUNICATION. Advice from the board provided to the person in a written communication must have been in response to a specific written inquiry from the person seeking relief from liability, or from his or her representative. To be considered a specific written inquiry for purposes of this regulation, representatives must identify the specific person for whom the advice is requested. Such inquiry must have set forth and fully described the facts and circumstances of the activity or transactions for which the advice was requested.

(c) **WRITTEN ADVICE PROVIDED IN A PRIOR AUDIT.** Presentation of the person's books and records for examination by an auditor shall be deemed to be a written request for the audit report. If a prior audit report of the person requesting relief contains written evidence which demonstrates that the issue in question was examined, either in a sample or census (actual) review, such evidence will be considered "written advice from the board" for purposes of this regulation. A census (actual) review, as opposed to a sample review, involves examination of 100% of the person's transactions pertaining to the issue in question. For written advice contained in a prior audit of the person to apply to the person's activity or transaction in question, the facts and conditions relating to the activity or transaction must not have changed from those which occurred during the period of operation in the prior audit. Audit comments, schedules, and other writings prepared by the board that become part of the audit work papers which reflect that the activity or transaction in question was properly reported and no amount was due are sufficient for a finding for relief from liability, unless it can be shown that the person seeking relief knew such advice was erroneous.

Authority: Section 50152 Revenue and Taxation Code.
 Section 25299.42 Health and Safety Code.

Reference: Section 50112.5 Revenue and Taxation Code.

Regulation 1271. RECORDS.

(a) Definitions.

(1) “Database Management System” means a software system that controls, relates, retrieves, and provides accessibility to data stored in a database.

(2) “Electronic data interchange” or “EDI technology” means the computer to computer exchange of business transactions in a standardized structured electronic format.

(3) “Hardcopy” means any document, record, report or other data maintained in a paper format.

(4) “Machine-sensible record” means a collection of related information in an electronic format. Machine-sensible records do not include hardcopy records that are created or recorded on paper or stored in or by a storage-only imaging system such as microfilm or microfiche.

(5) “Fee payer” means any person liable for the payment of a fee imposed by Section 25299.41 of the Health and Safety Code.

(b) General.

(1) A fee payer shall maintain and make available for examination on request by the board or its authorized representative, all records necessary to determine the correct underground storage tank maintenance fee liability and all records necessary for the proper completion of underground storage tank maintenance fee returns. Such records include but are not limited to:

(A) Normal books of account ordinarily maintained by the average prudent businessperson engaged in the activity in question.

(B) Bills, receipts, invoices, cash register tapes, or other documents of original entry supporting the entries in the books of account.

(C) Schedules or working papers used in connection with the preparation of fee returns.

(2) Machine-sensible records are considered records under Revenue and Taxation Code Sections 50153.

(c) Machine-Sensible Records

(1) General.

(A) Machine-sensible records used to establish fee compliance shall contain sufficient source document (transaction-level) information so that the details underlying the machine-sensible records can be identified and made available to the board upon request. A fee payer has discretion to discard duplicated records and redundant information provided the integrity of the audit trail is preserved and the responsibilities under this regulation are met.

(B) At the time of an examination, the retained records must be capable of being retrieved and converted to a standard magnetic record format e.g., Extended Binary Coded Decimal Interchange Code (EBCDIC) or American Standard Code for Information Interchange (ASCII) flat file.

(C) Fee payers are not required to construct machine-sensible records other than those created in the ordinary course of business. A fee payer who does not create the electronic equivalent of a traditional paper document in the ordinary course of business is not required to construct such a record for fee purposes.

(2) Electronic Data Interchange Requirements.

(A) Where a fee payer uses electronic data interchange (EDI) processes and technology, the level of record detail, in combination with other records related to the transactions, must be equivalent to that contained in an acceptable paper record. For example, the retained records should contain such information as vendor name, invoice date, product description, quantity purchased, price, amount of fee, indication of fee status (e.g., for resale), and shipping detail. Codes may be used to identify some or all of the data elements, provided the fee payer maintains a method which allows the board to interpret the coded information.

(B) The fee payer may capture the information necessary to satisfy subdivision (c)(2)(A) at any level within the accounting system and need not retain the original EDI transaction records provided the audit trail, authenticity, and integrity of the retained records can be established. For example, a fee payer using EDI technology receives electronic invoices from its suppliers. The fee payer decides to retain the invoice data from completed and verified EDI transactions in its accounts payable system rather than to retain the EDI transactions themselves. Since neither the EDI transaction nor the accounts payable system capture information from the invoice pertaining to product description and vendor name (i.e., they contain only codes for that information), the fee payer must also retain other records, such as its vendor master file and product code description lists, and make them available to the board. In this example, the fee payer need not retain its EDI transaction for fee purposes.

(3) Electronic Data Processing Systems Requirements. The requirements for an electronic data processing (EDP) accounting system should be similar to that of a manual accounting system, in that an adequately designed accounting system should incorporate methods and records that will satisfy the requirements of this regulation.

(4) Business Process Information.

(A) Upon request of the board, the fee payer shall provide a description of the business process that created the retained records. Such description shall include the relationship between the records and the fee documents prepared by the fee payer and the measures employed to ensure the integrity of the records.

(B) The fee payer shall be capable of demonstrating:

1. the functions being performed as they relate to the flow of data through the system;

2. the internal controls used to ensure accurate and reliable processing and;

3. the internal controls used to prevent unauthorized addition, alteration, or deletion of retained records.

(C) The following specific documentation is required for machine sensible records retained pursuant to this regulation:

1. record formats or layouts;

2. field definitions (including the meaning of all codes used to represent information);

3. file descriptions (e.g., data set name); and

4. detailed charts of accounts and account descriptions.

(d) Machine-Sensible Records Maintenance Requirements.

(1) The fee payer's computer hardware or software shall accommodate the extraction and conversion of retained machine-sensible records to a standard magnetic record format as provided in subdivision (c)(1)(B).

(2) The Board recommends but does not require that fee payers refer to the National Archives and Record Administration's (NARA) standards for guidance on the maintenance and storage of electronic records, such as the labeling of records, the location and security of the storage environment, the creation of back-up copies, and the use of periodic testing to confirm the continued integrity of the records.

(e) Access to Machine-Sensible Records.

(1) The manner in which the board is provided access to machine-sensible records may be satisfied through a variety of means that shall take into account a fee payer's facts and circumstances through consultation with the fee payer.

(2) Such access will be provided in one or more of the following manners:

(A) The fee payer may arrange to provide the board with the hardware, software, and personnel resources to access the machine-sensible records.

(B) The fee payer may arrange for a third party to provide the hardware, software, and personnel resources necessary to access the machine-sensible records.

(C) The fee payer may convert the machine-sensible records to a standard record format specified by the board, including copies of files, on a magnetic medium that is agreed to by the board.

(D) The fee payer and the board may agree on other means of providing access to the machine-sensible records.

(f) Fee payer Responsibility and Discretionary Authority.

(1) In conjunction with meeting the requirements of subdivision (c), a fee payer may create files solely for the use of the board. For example, if a data base management system is used, it is consistent with this regulation for the fee payer to create and retain a file that contains the transaction-level detail from the data base management system and that meets the requirements of subdivision (c). The fee payer should document the process that created the separate file to show the relationship between that file and the original records.

(2) A fee payer may contract with a third party to provide custodial or management services of the records. Such a contract shall not relieve the fee payer of its responsibilities under this regulation.

(g) Hardcopy Records.

(1) Except as specifically provided, fee payers are not relieved of the responsibility to retain hardcopy records that are created or received in the ordinary course of business as required by existing law and regulations. Hardcopy records may be retained on a record keeping medium as provided in subdivision (h).

(2) If hardcopy transaction level documents are not produced or received in the ordinary course of transacting business (e.g., when the fee payer uses electronic data interchange technology), such hardcopy records need not be created.

(3) Hardcopy records generated at the time of a transaction using a credit or debit card must be retained unless all the details necessary to determine correct fee liability relating to the transaction are subsequently received and retained by the fee payer in accordance with the regulation. Such details include those listed in subdivision (c)(2)(A).

(4) Computer printouts that are created for validation, control, or other temporary purposes need not be retained.

(h) Alternative Storage Media.

(1) For purposes of storage and retention, fee payer may convert hardcopy documents received or produced in the normal course of business and required to be retained under this regulation to storage-only imaging media such as microfilm or microfiche and may discard the original hardcopy documents, provide the conditions of this subdivision are met. Documents which may be stored on these media include, but are not limited to general books of account, journals, voucher registers, general and subsidiary ledgers, and supporting records of detail, such as sales invoices, purchase invoices, exemption certificates, and credit memoranda.

(2) Storage-only imaging media such as microfilm and microfiche systems shall meet the following requirements.

(A) Documentation establishing the procedures for converting the hardcopy documents to the storage-only imaging system must be maintained and made available on request. Such documentation shall, at a minimum, contain a sufficient description to allow an original document to be followed through the conversion system as well as internal procedures established for inspection and quality assurance.

(B) Procedures must be established for the effective identification, processing, storage, and preservation of the stored documents and for making them available for the period they are required to be retained under subdivision (i).

(C) Upon request by the board, a fee payer must provide facilities and equipment for reading, locating, and reproducing any documents maintained on storage-only imaging media.

(D) When displayed on such equipment or reproduced on paper, the documents must exhibit a high degree of legibility and readability. For this purpose, legibility is defined as the quality of a letter or numeral that enables the observer to identify it positively and quickly to the exclusion of all other letters or numerals. Readability is defined as the quality of a group of letters or numerals being recognizable as words or complete numbers.

(E) All data on storage-only imaging media must be maintained and arranged in a manner that permits the location of any particular record.

(F) There is no substantial evidence that the storage-only imaging medium lacks authenticity or integrity.

(i) Record Retention - Time Period. All records required to be retained under this regulation must be preserved for a period of not less than four years unless the State Board of Equalization authorizes in writing their destruction within a lesser period.

(j) Record Retention Limitation Agreements.

(1) The board has the authority to enter into or revoke a record retention limitation agreement with the fee payer to modify or waive any of the specific requirements in this regulation. A fee payer's request for an agreement must specify which records (if any) the fee payer proposes not to retain and provide the reasons for not retaining such records, as well as proposing any other terms of the requested agreement. The fee payer shall remain subject to all requirements of this regulation that are not modified, waived, or superseded by a duly approved record retention limitation agreement.

(A) If a fee payer seeks to limit its retention of machine-sensible records, the fee payer may request a record retention limitation agreement, which shall:

1. document understandings reached with the board, which may include, but are not limited to, any one or more of the following issues:

a. the conversion of files created on an obsolete computer system;

b. restoration of lost or damaged files and the actions to be taken;

c. use of fee payer computer resources, and

2. specifically identify which of the fee payer's records the Board determines are not necessary for retention and which the fee payer may discard, and

3. authorize variances, if any, from the normal provisions of this regulation.

(B) The board shall consider a fee payer's request for a record retention limitation agreement and notify the fee payer of the actions to be taken.

(C) The board's decision to enter or not to enter into a record retention limitation agreement shall not relieve the fee payer of the responsibility to keep adequate and complete records supporting entries shown on any fee or information return.

(2) A fee payer's record retention practices shall be subject to evaluation by the board when a record retention limitation agreement exists. The evaluation may include a review of the fee payer's relevant data processing and accounting systems with respect to EDP systems, including systems using EDI technology.

(A) The board shall notify the fee payer of the results of any evaluation, including acceptance or disapproval of any proposals made by the fee payer (e.g., to discard certain records) or any changes considered necessary to bring the fee payer's practices into compliance with this regulation.

(B) Since the evaluation of a fee payer's record retention practices is not directly related to the determination of fee reporting accuracy for a particular period or return, an evaluation made under this regulation is not an "examination of records" pursuant to Revenue and Taxation Code Section 50153.

(C) Unless otherwise specified, an agreement shall not apply to accounting and fee systems added subsequent to the completion of the record evaluation. All machine-sensible records produced by a subsequently added accounting or fee system shall be retained by the fee payer in accordance with this regulation until a new evaluation is conducted by the board.

(D) Unless otherwise specified, an agreement made under this subdivision shall not apply to any person, company, corporation, or organization that, subsequent to the fee payer's signing of a record retention limitation agreement, acquires or is acquired by the fee payer. All machine-sensible records produced by the acquired or the acquiring person, company, corporation, or organization, shall be retained pursuant to this regulation.

(3) In addition to the record retention evaluation under subdivision (j)(2), the board may conduct tests to establish the authenticity, readability, completeness, and integrity of the machine-sensible records retained under a record retention limitation agreement. The board shall notify the fee payer of the results of such tests. These tests may include the testing of EDI and other procedures and a review of the internal controls and security procedures associated with the creation and storage of the records.

(k) Failure to Maintain Records. Failure to maintain and keep complete and accurate records will be considered evidence of negligence or intent to evade the fee and may result in penalties or other appropriate administrative action.

Authority: Revenue and Taxation Code Section 50152.

References: Revenue and Taxation Code Sections 50153.